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EXAMINER

DAVIS, CASSANDRA HOPE

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/755,161
Filing Date: January 12, 2004
Appellant(s): SHARON, MICHAEL

Howard R Greenberg
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 28, 2006 appealing from the Office action mailed August 30, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

1,295,763	Kohn	2-1925
2,917,179	Casey et al.	12-1959
3,623,615	Kawachi	11-1971
2003/0010815	Balzer	1-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reinhold (U.S. Patent No. 1,498,577) in view of Balzer (US Pub. No. 2003/0010815).

The examiner has taken the position that the appellant is not positively claiming the compact disk in claim 14. Reinhold shows in figures 1-6 a disk-shaped pouch (1-3) comprising a first disk-shaped side (1) and a second side (2) that are attached evenly to form a pouch for the containment and removal of a record. Reinhold does not disclose placing a tab on the first disk shaped side. Balzer shows in figures 1-10 the idea of placing a tab (b) on the top edge of a sleeve that can hold CDs, DVDs, etc. In view of the teachings of Balzer it would have been obvious to one in the art to modify Reinhold by placing a tab on the first disk-shaped side since this would allow a plurality of the pouches to be filed together and easily found based upon the indicia placed on the tab, i.e. stored and located in an easier, faster, and more convenient manner.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reinhold (U.S. Patent No. 1,498,577) in view of Balzer (US Pub. No. 2003/0010815) as applied to claim 14 above and further in view of Kohn (U.S. Patent No. 1,295,763).

The examiner has taken the position that the appellant is positively claiming the compact disk in claim 15. Reinhold in view of Balzer disclose the appellant's basic inventive concept except for placing a center hole in the pouch and making the device stored in the pouch in the form of a compact disk. Kohn shows in the figure the idea of placing a hole (3) in a pouch in order to allow a portion of the article within the pouch to be seen. In view of the teachings of Kohn it would have been obvious to one in the art to modify Reinhold by placing an opening in the pouch since this would allow a portion of the article within the pouch to be seen which would create a more amusing pouch and would allow the contents of the pouch to be determined in a faster and easier manner. Balzer discloses the idea of placing a compact disk within the pouch. In view of the teachings of Balzer it would have been obvious to one in the art to modify Reinhold by placing a compact disk within the pouch since this would allow the pouch to be used to hold a wider range of audio type devices and it is considered within one skilled in the art to replace one type of audio device with another type. The hole in the pouch is considered to be congruent to the hole in the CD. Congruent is defined as being corresponding and corresponding is defined as being similar (Webster's II New Riverside University Dictionary). The

holes in the pouch and CD have a similar shape and overlap one another and are therefore considered to be "congruent".

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reinhold (U.S. Patent No. 1,498,577) in view of Balzer (US Pub. No. 2003/0010815) as applied to claim 14 above and further in view of Kawachi (U.S. Patent No. 3,623,615) or Casey et al. (U.S. Patent No. 2,917,179).

The examiner has taken the position that the appellant is not positively claiming the compact disk in claims 11 and 12. Reinhold in view of Balzer disclose the appellant's basic inventive concept except for attaching the disk-shaped pouch onto a support means which rests on a horizontal surface. Kawachi shows in figures 1-8 the idea of placing a plurality of devices (14) onto a housing (12). Casey et al. shows in figures 1-3 the idea of placing a plurality of audio devices (16) onto a housing (10). In view of the teachings of Kawachi or Casey et al. it would have been obvious to one in the art to modify Reinhold by attaching a plurality of the pouches to a support means since this would allow the pouches with audio devices therein to be stored in a more convenient and orderly manner. In regard to claims 11 and 12, the holders shown by Kawachi and Casey are capable of

allowing disk-shaped pouches to perform the function of rotating about a common axis of the support means which is parallel to the horizontal surface.

(10) Response to Argument

Regarding the rejection of claims 14 and 15 under 35 U.S.C. 103(a) as being unpatentable over Reinhold in view of Balzer, the appellant argues these references cannot properly be combined to render claim 14 obvious and unpatentable. Specifically, the appellant argues Reinhold discloses a single circular record case having a spacer for holding one or two records which is not intended for rotation and which disclosure alludes in no way whatsoever to any type of filing system and Balzer discloses a rectangular sleeve which cannot be rotated and employs tabs which require thumbing through.

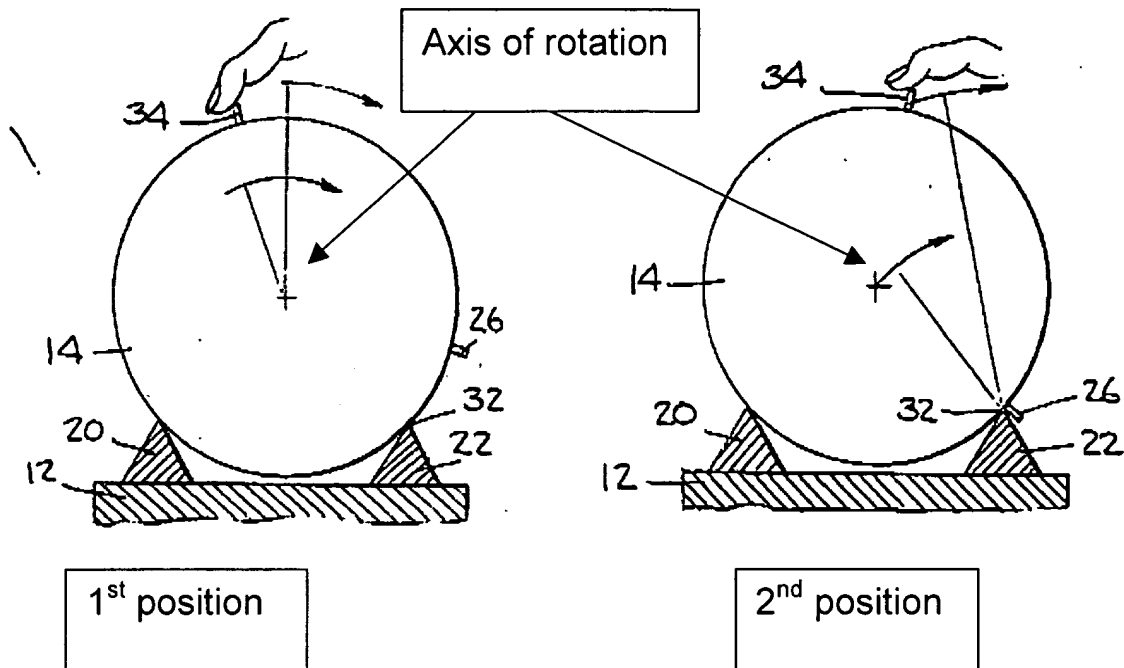
The examiner contends that both Reinhold and Balzer teach holder for a disc type items. Reinhold clearly teaches a circular pocket type holder for holding a disc shaped record. See lines 10-19 and 23-25. Balzer teaches a pocket type holder *j* for a compact disc. The holder taught by Balzer further comprises tab(s) which can be written upon to identify the sleeve or pocket in use. See paragraph 0050. Balzer also recites in paragraph 0056:

[0056] The manner of using the sleeved pockets to store contents are of present use, but do not have a tabbed index filing system that enable the human operator to more readily identify and access a particular sleeve. Without tab(s), the human operator must search through all their sleeves until the desired sleeve is identified.

Balzer clearly teaches that sleeves or pockets to store items is well known, however Balzer invention is drawn to the use tabs to aid in identifying a desired sleeve. As a result the examiner maintains the position that constructing the pocket type holder taught by Reinhold with tab(s) as taught by Balzer would be obvious to provide a means identify a particular or desired pocket/sleeve type holder. In addition, the examiner points out the claims 14 and 15 do not recites pouch being able to rotate.

Regarding the rejection of claims 11 and 12 under 35 U.S.C. 103(a) as being unpatentable over Reinhold in view of Balzer as applied to claim 14 above and further in view of Kawachi or Casey et al, the appellant argues none of the reference teach, suggest or imply the rotationability of a pouch about a common axis. The examiner disagrees. Kawachi clearly teaches a disc-shaped reel case 14 and a rack or holder 12. Figure 1 of Kawachi shows a plurality of reel cases 14 rotatably mounted in the rack. Figures 2-3 shows the reel cases 14 rotated from a first position, seen in

figure 2 to a second position, seen in figure 3, wherein the rotation of the all of the reel cases are about the same or common axis.



Since the rack taught by Kawachi is for supporting disc shaped holder, the examiner maintains that one skilled in the art would be able to support or substitute the round or disc shaped holder taught by Reinhold and Balzer within the rack taught by Kawachi.

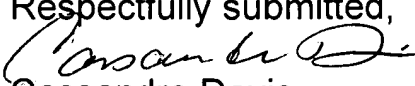
With respect to Casey et al., the appellant argues that Casey disclose a notched record holder wherein a record is snugly inserted into an individual notch. Again, Since the rack taught by Casey is for supporting disc shaped item, the examiner maintains that one skilled in the art would

be able to support or substitute the round or disc shaped holder taught by Reinhold and Balzer within the rack taught by Casey et al. Because the disc shaped record taught by Casey is round it can inherently rotate along its edges. In addition, mounting a plurality of the same round or disc shaped holder in the rack taught by Casey would inherently mean that the central axis of holders would be the same therefore the holder would rotate about a common central axis.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Cassandra Davis
Primary Examiner

Conferees:   LM
CD, JS, LM